

Determination Key to the American Burying Beetle 4(d) Rule for Federal and Non-Federal Activities

This key will help you determine if your proposed project is excepted from prohibited take of the American burying beetle (ABB), as defined in the 4(d) rule under the Endangered Species Act (Act)(50 CFR 17.47(d), Federal Register Citation 85 FR 65241). If so, you will receive a certification letter from the U.S. Fish and Wildlife Service (Service) indicating that you have followed the Service's ABB 4(d) key process and that your proposed project is excepted from take prohibitions.

This is an interim key for your use until an online key is available through the Information for Planning and Consultation (IPaC) system. The ABB 4(d) rule provides protections and exceptions for the ABB only. To assess potential impacts to other federally-protected species, please continue the local Ecological Services Field Office process for consultation and technical assistance, which should include the use of IPaC.

Select one: Federal Agency/Federal Nexus No Federal Nexus

Project Name: _____

If this is a federal agency project, or if the project has a federal nexus, fill out federal agency information below:

Project Location (please include County): _____

Federal Agency Name: _____

Point of Contact: _____

Phone # _____ Email _____

If you are a non-federal entity, fill out the information below. This includes non-federal entities that are acting as the delegated authority for a federal agency. If you are the delegated authority, provide federal agency contact information above, as well.

Company Name: _____

Point of Contact: _____

Phone # _____ Email _____

Please follow the steps below and check all appropriate boxes:

Step A - Did the results of your IPaC resource list include the American burying beetle?

Yes – your project is within the *Area of Influence* of the American burying beetle.
Continue to Step B.

No – your project is outside of the species current *Area of Influence*. The Action will have “No Effect” on the ABB. No concurrence or permit from the Service required. Document the IPaC species list in your files. No further consultation with the Service related to the ABB is necessary.

Step B - Will your activity *purposefully take* ABB? For example, are you capturing ABBs for research?

Yes - my activity includes purposefully taking ABBs.

- Intentional take is not excepted under the 4(d) rule. Research that involves handling ABBs does require a permit; if you are conducting research that includes capturing and handling ABBs, you should contact the U.S. Fish and Wildlife Service to apply for a permit.
- Other *purposeful take* (see Definitions below) of ABBs is prohibited. You should contact the U.S. Fish and Wildlife Service for more information. Please contact the Service’s Ecological Services Field Office located nearest the project. Office contact information is provided at the end of this key.

No - my activity does not include purposefully taking of ABBs.
Continue to Step C.

Step C - Is the *action area* of your proposed project wholly located within one of the following Analysis Areas (see map at end of this document).

Yes:

- Southern Plains Analysis Area – Continue to Step D
- Northern Plains Analysis Area – Continue to Step E
- New England Analysis Area – Continue to Step F

No or uncertain (if your project is near the boundary and you are uncertain if the action area is wholly within one of the above Analysis Areas, select this option.

Please contact the closest U.S. Fish and Wildlife Service Ecological Services Field Office for further guidance. Office contact information is provided at the end of this key.

Step D - If you have reached this Step, you have determined that your action area is located wholly within the Southern Plains analysis areas. To narrow your project down further, please answer the following question:

Is the action area wholly located outside of *Conservation Lands* as identified in the 4(d) rule. See map and definitions at end of this document.

Yes - Incidental take (see Definitions below) of ABBs is excepted from prohibitions by the final 4(d) rule in Southern Plains analysis areas outside defined Conservation Areas.

The Action is consistent with activities analyzed in the Service's Programmatic Biological Opinion for the 4(d) rule. The Action may affect the American burying beetle; however, any take that may occur as a result of the Action is not prohibited under the Act, Section 4(d) rule adopted for this species at 50 CFR 17.47(d), Federal Register Citation 85 FR 65241.

**Please fill out the Questionnaire at the end of this key and submit this completed form to the nearest U.S. Fish and Wildlife Service Ecological Services Field Office. The subject line in your email should read "ABB 4d Key Letter Request" **

The Service will respond by providing you a certification letter indicating that you have followed the Service's ABB 4(d) key process and that your proposed project is excepted from take prohibitions.

No or uncertain - all or portions of the Action Area are, or may be, within a defined Conservation Land.

Based on its location within a defined Conservation Land, incidental take from the proposed project may not be excepted under the 4(d) Rule. Please contact the closest U.S. Fish and Wildlife Service Ecological Services Field Office for further guidance. Office contact information is provided at the end of this key.

Step E - If you have reached this step, you have determined that your action area is wholly located within the Northern Plains analysis areas. To narrow your project down further, please answer the following question(s):

Is your proposed action considered wildlife management conducted by Federal or State government agencies?

Yes - the proposed action is wildlife management conducted by Federal or State government agencies?

The Action is consistent with activities analyzed in the Service's Programmatic Biological Opinion for the 4(d) rule. The Action may affect the American burying

beetle; however, any take that may occur as a result of the Action is not prohibited under the Act, Section 4(d) rule adopted for this species at 50 CFR 17.47(d), Federal Register Citation 85 FR 65241.

**Please fill out the Questionnaire at the end of this key and submit this completed form to the nearest U.S. Fish and Wildlife Service Ecological Services Field Office. The subject line in your email should read “ABB 4d Key Letter Request” **

The Service will respond by providing you a certification letter indicating that you have followed the Service’s ABB 4(d) key process and that your proposed project is excepted from take prohibitions.

No - Continue to Step F

Step F - If you have reached this step, you have determined that your action area is wholly located within either the Northern Plains or New England analysis areas. To narrow your project down further, please answer the following question(s):

Does your proposed action meet either following criteria:

- Is the proposed action considered to be normal ranching and grazing activities?
See definitions.

-OR-

- Is the action being led by an employee or agent of the Service or of a State conservation agency that is operating a conservation program pursuant to the terms of a cooperative agreement with the Service in accordance with section 6(c) of the ESA, who is designated by his or her agency for such purposes, may, when acting in the course of his or her official duties, take American burying beetles, provided that, for State conservation agencies, the American burying beetle is covered by an approved cooperative agreement to carry out conservation programs?

Yes - the action meets one of the two criteria outlines above.

The Action is consistent with activities analyzed in the Service’s Programmatic Biological Opinion for the 4(d) rule. The Action may affect the American burying beetle; however, any take that may occur as a result of the Action is not prohibited under the Act, Section 4(d) rule adopted for this species at 50 CFR 17.47(d), Federal Register Citation 85 FR 65241.

**Please fill out the Questionnaire at the end of this key and submit this completed form to the nearest U.S. Fish and Wildlife Service Ecological Services Field Office. The subject line in your email should read “ABB 4d Key Letter Request” **

The Service will respond by providing you a certification letter indicating that you have followed the Service's ABB 4(d) key process and that your proposed project is excepted from take prohibitions.

No - the action does not meet either of the criteria above – Continue to Step G

Step G - If you have reached this step, any incidental take that may occur as a result of your project is not excepted by the 4(d) rule. The following question will help to determine if any take associated with your project would be identified as prohibited take, in accordance with the 4(d) rule.

Will the action include soil disturbance of suitable ABB habitat, including but not limited to the use of vehicles or heavy equipment, vegetation removal, use of herbicides, pesticides, other hazardous chemicals that may impact soil or vegetation or otherwise impact ABB habitat?

Yes – Any Incidental take from the proposed project is prohibited take and based on your answers in Steps A-F is not excepted under the 4(d) Rule. Please contact the closest U.S. Fish and Wildlife Service Ecological Services Field Office for further guidance. Office contact information is provided at the end of this key.

No - Any incidental take associated with your proposed project is not prohibited:

The Action is consistent with activities analyzed in the Service's Programmatic Biological Opinion for the 4(d) rule. The Action may affect the American burying beetle; however, any take that may occur as a result of the Action is not prohibited under the Act, Section 4(d) rule adopted for this species at 50 CFR 17.47(d), Federal Register Citation 85 FR 65241.

**Please fill out the Questionnaire at the end of this key and submit this completed form to the nearest U.S. Fish and Wildlife Service Ecological Services Field Office. **

The Service will respond by providing you a certification letter indicating that you have followed the Service's ABB 4(d) key process and that your proposed project is excepted from take prohibitions.

QUESTIONNAIRE - American Burying Beetle 4(d) Key**1. Please select the activity that best matches your proposed action.**

Soil disturbance related to urban expansion or construction of structures

Soil disturbance related to agricultural conversion of ABB habitat to cropland

Soil disturbance related to grazing and ranching practices

Soil disturbance related to prescribed fire

Soil disturbance related to forestry practices

Wind Industry development and turbine operation

Soil disturbance related to oil and gas development

Soil disturbance related to road construction and maintenance

Soil disturbance related to transmission line construction and maintenance

Soil disturbance related to water line infrastructure construction and maintenance

Soil disturbance related to communication infrastructure construction and maintenance

Soil disturbance related to wildlife management.

Other activities with soil disturbance - briefly describe below

2. Estimate the total acres of suitable American burying beetle habitat that may be affected by your proposed project.

Acres:

Ecological Services Field Office Contact Information**Arkansas Ecological Services Field Office**

110 S. Amity Road
Suite 300
Conway, AR 72032
Phone: 501-513 4470
Fax: 501-513 4480

Kansas Ecological Services Field Office

2609 Anderson Avenue
Manhattan, Kansas 66502
Telephone: 785-539-3474
Fax: 785-539-8567

Nebraska Ecological Services Field Office:

9325 South Alda Road
Wood River, NE 68883
Fax: (308) 384-8835
Phone: (308) 382-6468
Email: NebraskaES@fws.gov ← **SEND REQUESTS HERE**

New England Ecological Services Field Office

70 Commercial St., Suite 300
Concord, NH 03301
Phone: (603) 223-2541
Fax: (603) 223-0104

Oklahoma Ecological Services Office

9014 E 21st Street
Tulsa, OK 74129
Phone: 918-581-7458
Email: OKProjectReview@fws.gov ← **SEND REQUESTS HERE**
<http://www.fws.gov/southwest/es/Oklahoma/>

South Dakota Ecological Services Field Office

420 S. Garfield Avenue, Suite 400
Pierre, SD 57501-5408
Phone (605) 224-8693
FAX 605-224-9974
Email: southdakotafieldoffice@fws.gov

DEFINITIONS - American Burying Beetle 4(d) Key

“Area of Influence” is the area within which any project should consider potential effects to the listed species. The Area of Influence typically encompassed larger areas than simply where the species is known to exist. For example, aquatic species may occur in only one small section of a stream, but work upstream of that area, or within the watershed could result in effects to where the species is located, thus impacting the listed species. Those effects warrant consideration under Section 7 of the Act.

“Conservation Lands” We define “conservation lands” in the Southern Plains analysis areas as lands included within the existing boundaries of Fort Chaffee in Arkansas (approximately 64,000 acres), and McAlester Army Ammunition Plant (approximately 45,000 acres) in Oklahoma, and Camp Gruber/Cherokee Wildlife Management Area (approximately 64,000 acres) in Oklahoma. These areas have defined boundaries and management that is compatible with recovery for the American burying beetle.

“Incidental take” is defined by the Endangered Species Act as take that is "incidental to, and not the purpose of, the carrying out of an otherwise lawful activity." For example, plowing firebreaks for prescribed burns can kill ABBs in the soil, but the purpose of the activity is not to kill ABBs.

“Ranching and grazing” means activities involved in grazing livestock (e.g., cattle, bison, horse, sheep, goats, or other grazing animals) such as: gathering of livestock; construction and maintenance of fences associated with livestock grazing; installation and maintenance of corrals, loading chutes, and other livestock working facilities; development and maintenance of livestock watering facilities; placement of supplements such as salt blocks for grazing livestock; and, when associated with livestock grazing, the control of noxious weeds, haying, mowing, and prescribed burning. Ranching and grazing does not include any form of farming, conversion of grassland to cropland, or management of cropland.

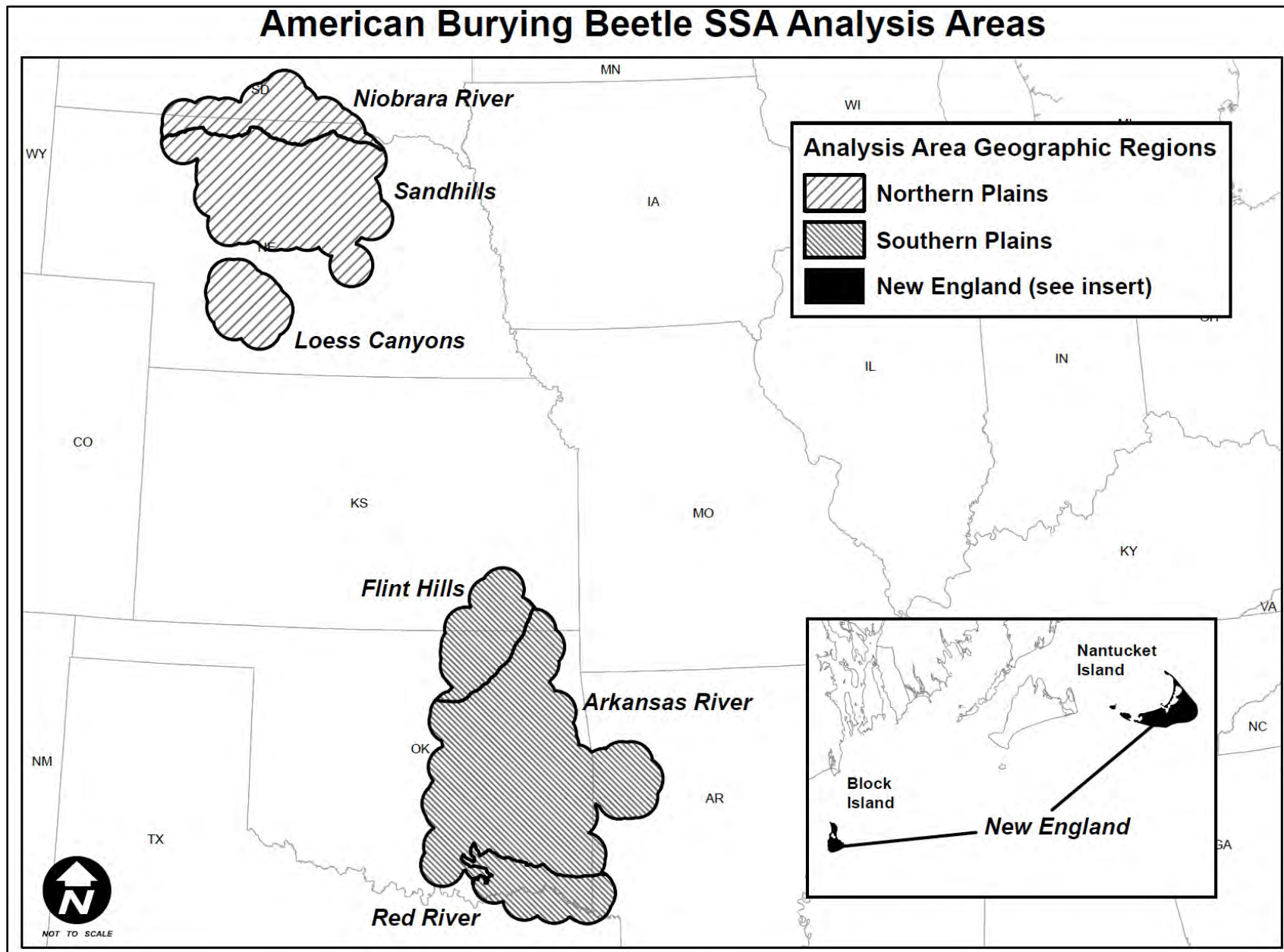
"Soil disturbance" Soil disturbance means movement or alteration of soil associated with modifying the existing land use. Soil disturbance includes actions such as grading, filling, soil excavating or topsoil stripping. Soil disturbance also includes non-physical alterations such as chemical treatment, including ground or soil sterilizers, and pesticides that would make the habitat unsuitable.

“Suitable Habitat” While the ABB uses a wide variety of habitats, the Service currently believes that areas exhibiting the following characteristics will not be of conservation value to ABBs and will not be credited as mitigation, except as possible buffer credits described below under the *Crediting Method* section. Areas exhibiting these characteristics should be excluded from mitigation lands because they are considered *unfavorable* for use by ABBs based on disturbance regime, vegetation structure, unsuitable soil conditions, and carrion availability:

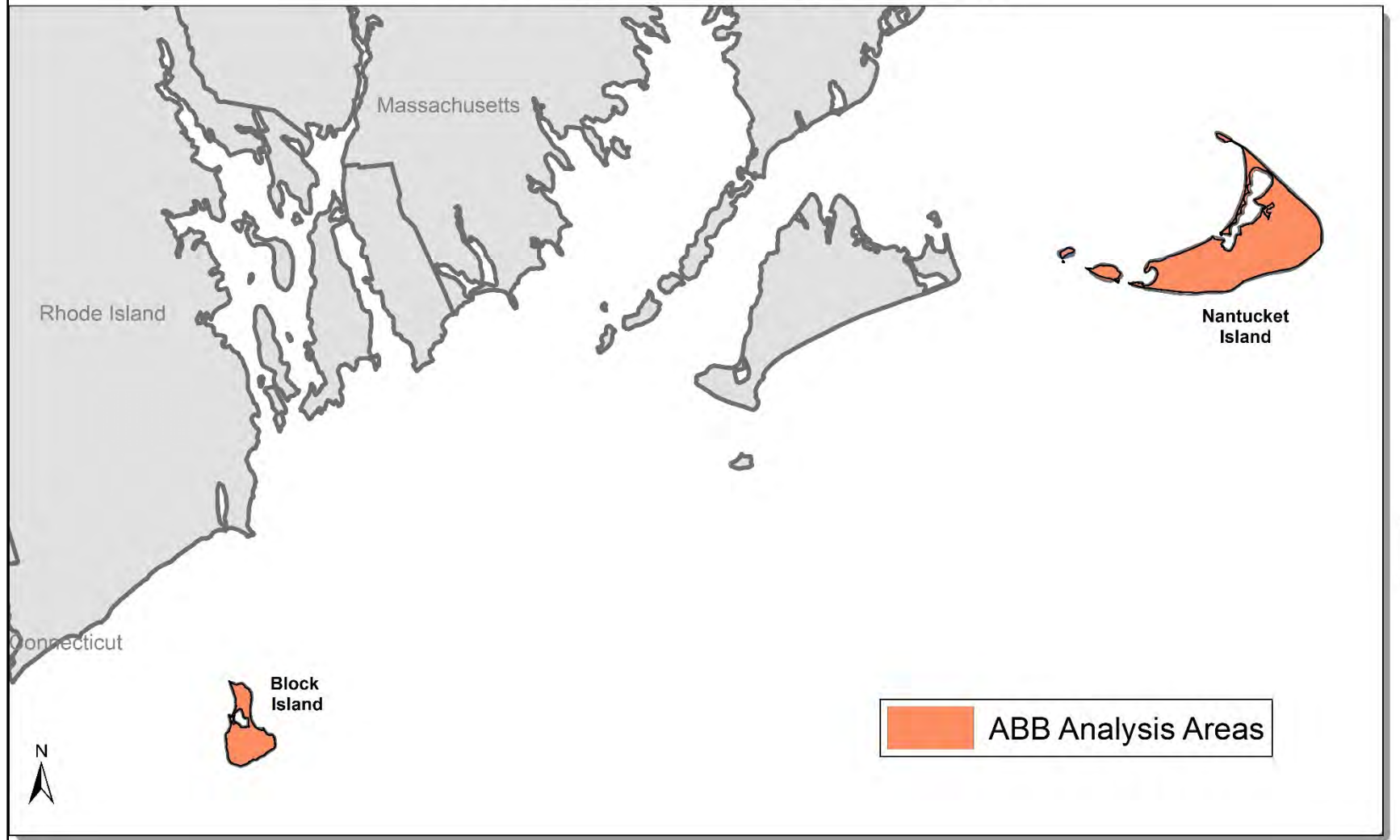
1. Land that is tilled on a regular basis, planted in monoculture, and does not contain native vegetation.
2. Pasture or grassland that has been maintained through frequent mowing, grazing, or herbicide application at a height of 20 cm (8 inches) or less.
3. Land that has already been developed and no longer exhibits topsoil, leaf litter, or vegetation.
4. Urban areas with maintained lawns, paved surfaces, or roadways.
5. Stockpiled soil without vegetation.
6. Wetlands or permanent waterbodies with standing water or saturated soils. Areas adjacent to wetlands and/or riparian areas are not considered unfavorable for the ABB, as they may be important for ABBs seeking moist soils during dry conditions.

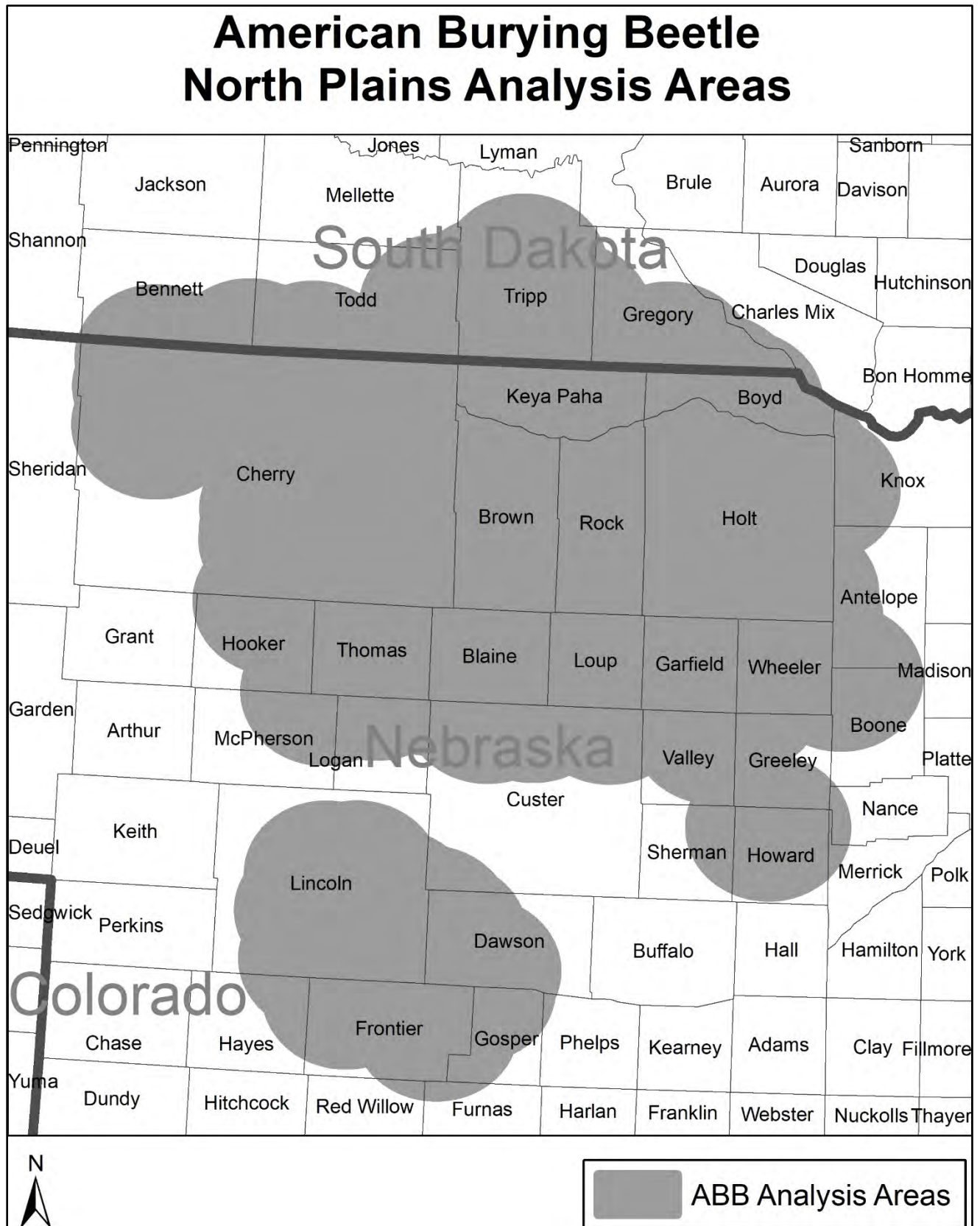
“Take” is defined by the Act as ‘to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect’ any endangered species. Purposeful take is when the reason for the activity or action is to conduct some form of take. For instance, conducting a research project that includes collecting and handling ABBs is a form of purposeful take. Intentionally killing or harming ABBs is also purposeful take and is prohibited.

Additional information regarding ABB biology and habitat can be found on the OKESFO webpages at: http://www.fws.gov/southwest/es/Oklahoma/ABB_Add_Info.htm.



American Burying Beetle New England Analysis Areas





American Burying Beetle Southern Plains Analysis Areas

